



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0676; FRL-10186-02-R6]

Air Plan Approval; New Mexico; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the New Mexico Environment Department (NMED) on October 13, 2016. The revision was submitted in response to a finding of substantial inadequacy and SIP call as published by EPA on June 12, 2015, concerning excess emissions during periods of startup, shutdown, and malfunction (SSM) events. EPA is approving the SIP revision and finds that such revision corrects the inadequacies identified in New Mexico's SIP in the June 12, 2015 SIP call.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2016-0676. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO2 Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665-6691, *Shar.alan@epa.gov*. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our September 30, 2022 (87 FR 59373) proposal. In that document we proposed to approve a revision to the New Mexico SIP submitted on October 13, 2016, in response to EPA’s national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we proposed to approve the removal of sections 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC of Part 7 Excess Emissions from the New Mexico SIP. We also proposed to determine that such SIP revision corrects the substantial inadequacies with the New Mexico identified in the June 12, 2015 SIP call.

II. Response to Comments

The public comment period for our proposed approval and determination expired on October 30, 2022, and no adverse comments were received. We received one comment supporting removal of sections 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC of Part 7 Excess Emissions from the New Mexico SIP. Therefore, we are finalizing our action as proposed.

III. Final Action

The EPA is approving a revision to the New Mexico SIP submitted on October 13, 2016, in response to EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we are approving the removal of sections 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC of Part 7 Excess Emissions from the New Mexico SIP. We are approving these revisions in accordance with section 110 of the Act. EPA is also determining that such SIP revision corrects the deficiencies in New Mexico's SIP identified in the June 12, 2015 SIP call.

IV. Environmental Justice Considerations

As stated in the proposal and for informational purposes only, EPA provided additional information regarding this action and potentially impacted populations. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."¹

EPA provided additional analysis of environmental justice associated with this action for the purpose of providing information to the public in our September 30, 2022 proposal (87 FR 59373). As discussed in the proposal, this action is intended to ensure that all communities and populations across New Mexico, and downwind areas, including

¹ <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

people of color and low-income and indigenous populations overburdened by pollution, receive the full human health and environmental protection provided by the CAA through the removal of affirmative defense provisions that have interfered with the enforcement structure of the CAA by raising inappropriate impediments to enforcement by states, the EPA, or citizens. There is nothing in the record which would indicate that this action will have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing the incorporation by reference of certain sections of the “20.2.7 NMAC” in 40 CFR 52.1620, as described in the Final Action above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for removal from the New Mexico SIP, have been removed from incorporation by reference by EPA into that plan, are no longer federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and incorporation by reference will be removed in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to

approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA offered consultation (by letter dated September 29, 2022) on our proposed rulemaking to tribal governments that may be affected by this action. We received no requests for formal tribal consultation.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 30, 2023.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40

CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION
PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG – New Mexico

2. In §52.1620(c), the first table titled “EPA Approved New Mexico Regulations” is amended by revising the entry for “Part 7” to read as follows:

§52.1620 Identification of plan.

* * * * *

(c) * * *

EPA Approved New Mexico Regulations

State Citation	Title/Subject	State approval/ effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20 - Environment Protection Chapter 2 - Air Quality				
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Part 7	Excess Emissions	7/10/2008, 10/13/2016	9/14/2009, 74 FR 46910, [Insert date of publication in the <i>Federal Register</i>] [Insert <i>Federal Register</i> citation].	Sections 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC are no longer in SIP, [Insert date of publication in the <i>Federal Register</i>]
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